IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2005

CORAM

THE HONOURABLE Mr.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE Mr.JUSTICE P.P.S.JANARTHANA RAJA

WRIT PETITION NO. 12331 OF 2002

M/s. I.P.Rings Limited
rep. By its Secretary
S.Rangarajan
No.24, College Road
Chennai 6. ... Petitioner

Vs.

1. The Tamil Nadu Taxation Special Tribunal, Chennai rep. By its Registrar, Singaravelar Maaligai
Rajaji Salai
Chennai 1.

2. The State of Tamil Nadu
rep. By the Deputy Commissioner (CT)
Madras (Central),
Commercial Taxes Building,
Greams Road
Chennai 6. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in T.C. (R) NO.96 of 1998 on its file and to quash the order passed therein dated 18.12.2001.

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For Petitioner : Mr.K.J.Chandran
For Respondents : Mr.T.Ayyasamy
Special Government Pleader (T)

ORDER

(Order of the Court was made by K.RAVIRAJA PANDIAN,J.

This writ petition has been filed challenging the correctness

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of the order of the Taxation Special Tribunal non-suiting the petitioner herein for the relief claimed that the goods manufactured and sold are only a steel ring covered under Entry 4 of the second schedule to the TNGST Act 1959 and taxable at 4% as declared goods.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act. In respect of the assessment year 1991-1992, the petitioner claimed that the turnover relating to the sale of steel rings manufactured and marketed by them is liable to sales tax at the rate of 4% being goods, answering Entry 4 of the Second Schedule to the Act. However, the Assessing Authority treated the goods as "automobile components" and levied sales tax at the rate of 8% under Entry 3 & 111 of the First Schedule. All the statutory authorities confirmed the assessment order which included the Special Tribunal as well. The correctness of the said order is now canvassed in this writ petition before us.

3. Mr. K.J.Chandran, learned counsel appearing for the petitioner submits that the authorities under the Act on an erroneous view of the matter have regarded the goods manufactured and sold by the petitioner as automobile component. Entry 4 (viii) of the Second schedule to the Act, reads as "discs, rings, forgings and steel castings", that the goods manufactured by the petitioner are only "steel ring". The user of the ring by the ultimate purchaser, particularly automobile manufacture as piston ring cannot alter the character of the goods. The user theory applied by the respondent is not conclusive in classifying the particular product as declared goods or not.

4. On the other hand, learned Special Government Pleader appearing for the respondents submits that though the user theory cannot be stated as conclusive but is logical. The common parlance theory applied by the authorities has been regarded as a general theory so as to know how the goods has been considered by a person, in the trade. There are certain operational improvements of the goods manufactured by the petitioner, which takes away the goods of the petitioner from the ambit of the steel ring, thus disabled the petitioner to claim the benefit under the second schedule.

5. Learned counsel on either side relied on the judgments so as to sustain their respective case, which we would refer to in the following paragraphs.

6. The Assessing Authority while passing the assessment order has come to the conclusion that the product of the petitioner cannot be considered as a steel ring on the basis of the purchase order placed by the customer. From the purchase order, the Assessing Officer concluded that the goods supplied by the petitioner

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are Double taper rings, compressor rings, oil rings for use in manufacturing of automobiles and oil engines. The first appellate authority in his order dated 21.11.1994 in Appeal NO.383 of 1993 has given a finding to the effect that in common parlance, the goods manufactured by the appellants are called piston rings and not as steel rings and these rings are being used in petrol and diesel engines. Apart from applying the common parlance theory, he has taken into consideration improvements that have been made to ring such as polishing and grinding. The said order has been confirmed by the Appellate Tribunal and Special Tribunal as well.

7. In order to resolve the issue, we are of the view that the relevant provision of the Central Sales Tax Act and the Schedule to the Tamil Nadu Sales Tax Act requires consideration.

Section 14 of the Central Sales Tax Act,which enumerates certain goods as follows:-

"Certain goods to be of special importance in inter-State trade or commerce.
"4. Iron and Steel that is to say.
(i) .....
(ii) .....
(iii).....
(iv) .....
(v) .....
(vi) .....
(vii) .....
(viii) discs, rings, forgings and steel castings"

Entry 4 (viii) of the Second schedule of TNGST Act is a mere reproduction of Section 14 (iv)(viii) of the Central Sales Tax Act.

8. The sample of the rings manufactured by the petitioner for sale have been placed before this Court for consideration. The goods so made available are nothing but steel rings finely made of various sizes. Of course, there is a small cut in both the ends of the rings. But that non-joining of the ends would not make the goods otherwise than a steel ring as it is very much in the circular form. The Concise Oxford Dictionary defines the word ring as "a small circular band, typically of precious metal". It is submitted that if the "piston rings" which is merely a ring made out of steel is capable of being regarded as steel ring, then it would fall within the scope of Entry 4 (viii) of the II schedule to the TNGST Act and could not be regarded as automobile component.

9. Section 4 of the TNGST Act provides that notwithstanding anything contained in section 3 or 3-A the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of

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declared goods at the rate and only at the point specified against each in the second schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year". Thus, Section 4 has the effect of overriding the provisions in Sections 3 and 3-A and also has the effect of overriding the First Schedule which is relatable to section 3. Sub-section (2) of Section 3 provides that in the case of the goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever be the quantum of turnover in that year.

10. In the case of DEWAN ENTERPRISES VS.COMMISSIONER OF SALES TAX, U.P (1996) 102 STC 67 (SC) with which reliance has been made by the counsel for the petitioner, the Court was concerned with Section 14(iv) of the Central Sales Tax Act and the entry referring to the wheels, tyres, axles or wheel sets: The question before the Supreme Court was as to whether a cycle rim fell within the scope of the entry. The Court held that the rim of a cycle is admittedly a part of the wheel and without a rim other parts cannot be regarded as a wheel. The Court further held rim which is an essential part of the cycle, would come within entry (xiv) of Section 14(iv) of the Central Sales Tax Act, 1956 and being declared goods cannot be taxed at a rate in excess of 4 per cent.

11. In GUJARAT STEEL TUBES LIMITED VS. STATE OF KERALA (1989) 74 STC 176 (SC), the apex Court considered the question as to whether the galvanised iron pipes and tubes are steel tubes within the meaning of item (xi) specified in Section 14(iv) of the Central Sales Tax Act, 1956. The Court held that the galvanising the pipe is merely to make it weather proof and the pipe would remain a steel tube before and after galvanising. The Court further observed: "Neither its structure nor function is altered. As a commercial item it is not different from a steel tube".

12. The Apex Court, in the case of INDIAN ALUMINIUM CABLES LTD VS. UNION OF INDIA (AIR 1985 SC 1201) has held that the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff." The Apex Court further concluded that "... it is difficult to say that pipe fittings, though they may have a distinctive name, are not pipes and tubes. It is true that all pipes and tubes cannot be described as pipe fittings. But it would not be correct to say that pipe fittings are not pipes and tubes. They are only a species of pipes and tubes."

13. In the case of INDIAN METALS AND FERRO ALLOYS LTD VS.

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COLLECTOR OF CENTRAL EXCISE (AIR 1991 SC 1028) the Court considered the case of an assessee who manufactured pipes, tubes and poles made of iron and steel supplied by it to the Telephone and Telegraph Departments of Government of India. A submission was made that on account of those items being called as poles, instead of pipes or tubes, they should be regarded as a different commercial commodity. While rejecting the aforesaid submission, the Court observed as follows:-

> " The statement that they are commercially distinct commodities is merely based on their being called 'poles'. They are also available in the same market in which normally pipes and tubes are otherwise available. Neither the circumstance that certain processes are applied to the 'mother' pipes or tubes not the fact that, in order to identify the particular type of tube or pipe on needs, one may use different names is sufficient to treat the article as a commercially different commodity."

14. The Division Bench of this Court in the case of TUBE INVESTMENTS OF INDIA LIMITED VS. DEPUTY COMMERCIAL TAX OFFICER, CHENNAI AND OTHERS (2003)129 STC 238) wherein the question that arose for consideration was whether the "exhaust pipes" supplied by the assessee to Ashok Leyland Limited, a manufacture of trucks, are steel tubes within the meaning of declared goods falling under Second schedule Section 4 (xi) of the TNGST Act, has held that the fact that the buyer has used the steel tube supplied by the petitioner as part of chassis/engine by fitting it into such engine/chassis, for use as exhaust pipe, does not in any way alter the basic fact that what is supplied by the petitioner is in fact, a steel tube of certain shape and length. The fact that the specification for the tube or pipe supplied was given by the buyer would also make no difference as what is supplied in fact, is the steel tube conforming to the specification given by the buyer and nothing more. The sales tax levied on steel tubes supplied by the petitioner, though put to use by the buyer as exhaust pipes, cannot exceed four per cent.

15. The Revenue relied on the decision of the Supreme Court in RAJASTHAN ROLLER FLOUR MILLS ASSOCIATION AND ANOTHER VS. STATE OF RAJASTHAN AND OTHERS (AIR 1994 SC 64) in which the Court held that the Flour, maida and suji derived from wheat are not "wheat" within the meaning of Section 14(i)(iii) of the Central Sales Tax Act. Flour, maida and suji are different and distinct goods from wheat.

16. Learned counsel for the revenue relied on the decision of the Supreme Court in MUKESH KUMAR AGGARWAL & CO VS. STATE OF MADHYA PRADESH AND OTHERS (1988)68 STC 324 (SC) and the decision of the Division Bench of this Court, in which one of us was party

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(K.RAVIRAJA PANDIAN,J.), in P.SAMIYAPPAN & CO., VS. TAMIL NADU TAXATION SPECIAL TRIBUNAL AND OTHERS (2003) 130 STC 44) to contend that in the absence of a statutory definition of a word, the word should be interpreted by giving a meaning, which would not offend the common speech of commercial men and the consuming public, for sales tax is a commercial tax on sales turnover of a dealer in the course of business. As the Entry referred to above is very categorical which includes steel ring as declared goods, the above said decisions would not in any way advance the case of the revenue.

17. The Revenue relied on the decision of the Division Bench of this Court in OPERA ARTS INDUSTRIES VS. REGISTRAR, TAMIL NDU TAXATION SPECIAL TRIBUNAL, CHENNAI AND ANOTHER (2005) 142 STC 113), wherein the question that arose for consideration was whether the elastic rail clips manufactured out of silica manganese steel rods was a separate and distinct commodity known in the trade circle and not come within the purview of forging within the Entry in Section 14(iv)(viii). In that case, the assessee purchased silica manganese steel rods out of which elastic rail clips were manufactured and sold to the railways. Those elastic rail clips were used for holding together the sleeper and the rails on the railway track. The steel rods purchased by the assessee were cut into the required sizes, heat treated, forged, dipped in oil for quenching and twisted to manufacture the railway clips according to the specifications of the railways. The elastic rail clip is "S" shaped. As various processes are involved in the manufacture of elastic rail clips and on that facts of the case the Division Bench has held that the elastic rail clips cannot be considered as declared goods of steel as provided in Section 14 of the CST .

18. Lastly, the Revenue relied on the decision in VASANTHAM FOUNDRY VS. UNION OF INDIA AND OTHERS (1995) 99 STC 87 (SC)). In that case, the Apex Court was of the view taking into consideration of the facts, that cast iron casting in its basic or rough form must be held to be cast iron. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, man-hole covers or bends, these cannot be regarded as "cast iron casting" in its primary or rough form; they are products made out of cast iron casting. Such products cannot be regarded as "cast iron" and cannot be treated as declared goods under section 14(iv) of the Central Sales Tax Act. However, in the case on hand ring has been specifically provided in the Entry as extracted above, which is not the case in Vasantham Foundry case.

19. The fact that the goods are polished and buyer has used the steel rings supplied by the petitioner as piston ring or oil engine ring does not in any way alter the basic fact that what is supplied by the petitioner is in fact a steel ring. As held by the

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Apex Court the State Legislature has no authority to prescribe a higher rate of tax on declared goods by changing the description of those goods. Article 286(3) of the Constitution obligates the States to be bound by the declaration made by Parliament regarding the goods which are of special importance in inter-state trade or commerce, as also the restrictions and conditions including the ceiling on rates, to which States may levy tax on such declared goods.

20. In view of the foregoing reasons, we are of the view that the conclusion arrived at by the authorities below are not correct and the product manufactured by the petitioner would come within the meaning of Entry 4 of the Second schedule to the TNGST Act. For the above reasons, the writ petition is allowed. The rule nisi is made absolute. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kb/krr

To:

1. The Registrar,
The Tamil Nadu Taxation Special
Tribunal,
Singaravelar Maaligai
Rajaji Salai
Chennai 1.

2. The Deputy Commissioner (CT), State of TN
Madras (Central),
Commercial Taxes Building,
Greams Road
Chennai 6.

+1cc to the Spl.Govt. Pleader (T) SR 50897

MS (CO)
km/6.1.

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